

*Law Offices of*  
**Robert G. Allen, P.C.**

Forest Point Center  
9300 Forest Point Circle  
Manassas, Virginia 20110 USA

Telephone: +(1)-703-361-2278  
Telecopier: +(1)-703-783-0791  
E-mail: [rgallen@rgallen.com](mailto:rgallen@rgallen.com)

November 25, 2014

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

EX PARTE PRESENTATION - VIA ELECTRONIC FILING

***Re: Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of License and Authorizations, MB Docket No. 14-57***

Dear Ms. Dortch:

On Friday, November 21, 2014 Mr. Elan Feldman and the undersigned counsel met with Hillary DeNigro, Chief, Industry Analysis Division, Marcia Glauber, Deputy Division Chief, Industry Analysis Division, Ty Bream, Attorney-Advisor, Industry Analysis Division and Jake Riehm, Attorney Advisor, Industry Analysis Division regarding the above-captioned proceeding, with specific reference to the Petition to Deny ("Petition") and related documents filed by Mr. Feldman and Comcast Corporation addressing the matters propounded in the Petition.

During the meeting, counsel and Mr. Feldman reiterated the key points contained in the Petition and responsive documents and advanced additional points relating thereto. Specifically, a summary of the points covered follows:

1) It is not the adjudication of the damages, but rather Comcast's conduct occurring in the wake of the damages that Mr. Feldman believes is a matter the Commission ought to review and consider in this proceeding. While Mr. Feldman would prefer to see the matter resolved prior to the Commission acting on the pending request for merger authority, as the Petition itself states, an alternative would be for the Commission to condition any approval of grant on the institution of a review and reporting procedure to ensure that Comcast is dealing fairly with those who, through no fault of their own, suffer damages as the result of Comcast's network construction activities. It would serve the public interest to institute reporting requirements that show good faith compliance with § 541(a)(2)(C) of the Communications Act, as amended, the statute requiring just compensation for damages caused in the course of cable system buildout.

2) As fully described in the Petition, such reporting requirement would apply only in cases of substantial damages resulting from buildout activities (\$25,000 or greater as proposed in the Petition). The reporting requirement would have Comcast certifying on a date one year after the proposed closing of the merger transaction (or any other date certain deemed appropriate by the Commission) that Comcast is meeting all of its then present obligations under §541(a)(2)(C) of the Communications Act. Such certification would contain verifications that all persons who had been damaged by Comcast resulting from the installation, construction, operation or removal of cable TV facilities involving incidents occurring six months or more prior to the date of the certification have been justly compensated and as for those damaged parties not yet so compensated, that the status of such claims be reported on, as well as any actions Comcast had taken to proactively resolve such open claims for damages. Important public benefits would flow from such a reporting requirement. Comcast would be incentivized to negotiate and cover such claims expeditiously, reducing foot-dragging.

3) Comcast operations are, of course, supposedly subject to the requirements of federal, state and local law as well as franchise contracts with local and state jurisdictions. In the case of Mr. Feldman, however, this multi-layered, multi-jurisdictional regulatory oversight of Comcast proved ineffective and farcical.

4) As set forth in the Petition, a federal law, § 541(a)(2) of the Communications Act of 1934, as amended, limits the construction of cable television systems to "...public rights of way and through easements..." A local law, Miami Code of Ordinances at Chapter 11, § 11-5(a) states that cable companies are expressly forbidden from installing "...cables, wires, lines...or any other equipment or facilities upon private property without owner consent..." However, neither the federal nor the local laws have been of any avail to Mr. Feldman who suffered his damage from Comcast construction activities almost 10 years ago. As shown in the Petition, Mr. Feldman believes that he has been grievously harmed by Comcast's violation of both the federal statute and the local ordinance.

5) Even though federal statutory law provides physical limits as to where cable facilities may be lawfully situated (in easements and public rights of way) and local authorities in Miami seemingly have a similar requirement as fully cited in the Petition, the reality is that the local authorities in Mr. Feldman's case seemed much more intent on enforcing an ordinance that prohibits any interfering with cable lines once they're put into place. This left Mr. Feldman unable to engage in self-help to reduce damages. Meanwhile, at the federal level and also as cited in the Petition, in prior attempts to seek relief from the FCC through the filing of complaints, Mr. Feldman was rebuffed by the Commission, citing jurisdictional limitations.

6) And so the wires remained affixed on the roof of Mr. Feldman's office for months on end without relief during 2005. The cables became enmeshed in the roof undermining its structural integrity and additional damage was caused to the weakened roof by Hurricanes Katrina and Wilma. Mr. Feldman's business operations were seriously disrupted and an employee was injured, as set forth in the Petition. Ironically, at the time Mr. Feldman was not even a Comcast subscriber.

7) Unfortunately, after first trespassing on Mr. Feldman's property almost ten years ago without permission of any kind, resulting in what Mr. Feldman says independent appraisers assessed as causing hundreds of thousands of dollars of damage to his roof, and after initially appearing to want to make things right, Comcast ultimately elected to engage in what is now little more than a legal war of attrition in and out of the courts. This is where the corporation with limitless resources enjoys great advantage over any complainant who can be effectively "punished" if pressing a claim.

8) Comcast's apparent one-time willingness to possibly pursue a just result devolved into a strategy of rolling out a phalanx of lawyers employing attrition techniques, combined with an unfortunate

negative campaign of innuendo directed against Mr. Feldman. While initially there was clear recognition of the fact by at least one Comcast lawyer that real damage had been done to Mr. Feldman (as was reflected in a letter-exhibit attached to the Petition) this posture degenerated to where Comcast began to vilify and shun Mr. Feldman. In fact, Comcast's entire rebuttal of the facts alleged in Mr. Feldman's Petition appear to have been contained in a single footnote to the Comcast consolidated Opposition, namely, footnote #986.

9) In its haste to dismiss the Petition, Comcast left completely unrebutted every sworn statement of fact contained in it, including the assertions that Comcast had trespassed on Feldman's property without permission in violation of § 541(a)(2) of the Communications Act; that the trespass continued unabated for seven months; that during this time two hurricanes exacerbated the roof damage; that business records, office equipment and personal injury resulted from Comcast's trespass; that a Comcast representative had asserted that the local franchising authority had no jurisdiction in this matter; and that there were no easements or rights of way on the roof in question.

10) In addition to leaving Mr. Feldman's *prima facie* case entirely unrebutted, Comcast chose to file its Opposition to the content contained in the Feldman Petition without a sworn sponsor. However, 47 USC § 309(d)(1) states that a party who is the subject of a petition to deny is given "...the opportunity to file a reply in which allegations of fact or denials thereof shall...*be supported by affidavit.*"

11) Comcast asserts more generally in its Opposition that character qualifications need to be analyzed under differing standards for so-called "Commission related" conduct versus "Non-Commission related" conduct. In the case of "Non-Commission related" conduct, Comcast asserts it should not be considered under the rubric of character qualifications unless the underlying activities giving rise to the dispute have first been finally adjudicated in another forum. If the damage to Mr. Feldman's roof and the ensuing foot-dragging through the months and years following the damage constituted "Non-Commission related" conduct, this would, of necessity, result in the further conclusion that the matter would require prior adjudication before being considered by the Commission as impacting on character qualifications. The problem with this approach is that in the *Green Eagle Order* as cited in Mr. Feldman's Reply to Opposition to Petition to Deny ("Reply") (and cited as well by Comcast in its Opposition) it is stated that, "With respect to Commission related conduct, the Commission has stated that all violations of provisions of the [Communications] Act...are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications..."

12) The Petition cites a violation of the Communications Act, namely § 541(a)(2)(c), as giving rise to the character qualifications at issue here. Therefore, as asserted in the Reply, when *Green Eagle* is applied, because this is a violation of the Communications Act itself, the matter falls into the category of a character issue requiring no prior adjudication.

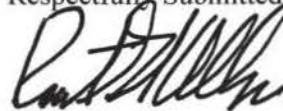
13) As further stated in the Reply, "Requiring full prior adjudication in a state or local forum of a cause clearly arising under Federal law would render that federal law a nullity. For if a subscriber, customer (or even an innocent bystander) damaged by Comcast in the course of its installation work were to have to privately litigate that matter to finality in another forum prior to asserting his or her cause before the Commission, there would be virtually no person in the country with the resources necessary to bear such an insufferable economic burden."

14) If the prior adjudication standard were to be applied in a situation like this, it would leave Comcast alone in the driver's seat, as Comcast could, at its sole election, intensify the level of litigation as much as its virtually unlimited resources would allow, thereby retaining unilateral control over just when the "prior adjudication" phase would end (if ever). Certainly, that cannot be the intention of Congress in enacting § 541(a)(2)(c). Adopting reporting requirements would add teeth to the federal statute.

15) Footnote 989 of its Opposition is the sole place Comcast refers to Mr. Feldman or his Petition by name, asserting that the Commission had "...fully addressed and rejected precisely the same claims..." in the NBCUniversal merger proceeding (Docket No. 10-56). This left unrebutted the grounds Mr. Feldman had pled in the Petition, at footnote 6, where he alleged violations of § 541(a)(2)(C) that occurred on a repeated and willful basis subsequent to the consummation of the NBCUniversal transaction and continuing to the present date. In his Reply, Mr. Feldman argued that "...Comcast should not now be somehow immunized in perpetuity from its obligation to comply with federal statutes based on a prior decision of the Commission."

16) Granting approval for the transfer of control will extend the Comcast footprint. Accordingly, the scale and scope of network construction activities will also be extended along with the increased likelihood of construction accidents and damages resulting therefrom. This makes all the more appropriate the implementation of a condition calling for the regular reporting by Comcast of its compliance with § 541(a)(2)(C), as outlined above and in the Petition.

Respectfully Submitted,



Robert G. Allen  
Counsel for Elan Feldman

cc: Hillary DeNigro  
Marcia Glauberman  
Ty Bream  
Jake Riehm